

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1970

By: Ford

6 COMMITTEE SUBSTITUTE

7 An Act relating to victims impact panel programs;
8 amending 22 O.S. 2011, Section 991a, as last amended
9 by Section 10, Chapter 304, O.S.L. 2018 (22 O.S.
10 Supp. 2018, Section 991a), which relates to
11 sentencing powers of the court; authorizing courts to
12 require participation in online victims impact panel
13 program; stating fee for program; allowing
14 participation by indigent persons at no charge;
15 modifying scope of certain definition; amending 22
16 O.S. 2011, Section 991c, as last amended by Section
17 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2018,
18 Section 991c), which relates to deferred sentencing;
19 authorizing courts to require participation in online
20 victims impact panel program; stating fee for
21 program; allowing participation by indigent persons
22 at no charge; amending 47 O.S. 2011, Section 11-902,
23 as last amended by Section 1, Chapter 61, O.S.L. 2018
24 (47 O.S. Supp. 2018, Section 11-902), which relates
to driving under the influence of alcohol or other
intoxicating substance; authorizing courts to require
participation in online victims impact panel program;
stating fee for program; allowing participation by
indigent persons at no charge; and providing an
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 22 O.S. 2011, Section 991a, as
last amended by Section 10, Chapter 304, O.S.L. 2018 (22 O.S. Supp.
2018, Section 991a), is amended to read as follows:

1 Section 991a. A. Except as otherwise provided in the Elderly
2 and Incapacitated Victim's Protection Program, when a defendant is
3 convicted of a crime and no death sentence is imposed, the court
4 shall either:

5 1. Suspend the execution of sentence in whole or in part, with
6 or without probation. The court, in addition, may order the
7 convicted defendant at the time of sentencing or at any time during
8 the suspended sentence to do one or more of the following:

9 a. to provide restitution to the victim as provided by
10 Section 991f et seq. of this title or according to a
11 schedule of payments established by the sentencing
12 court, together with interest upon any pecuniary sum
13 at the rate of twelve percent (12%) per annum, if the
14 defendant agrees to pay such restitution or, in the
15 opinion of the court, if the defendant is able to pay
16 such restitution without imposing manifest hardship on
17 the defendant or the immediate family and if the
18 extent of the damage to the victim is determinable
19 with reasonable certainty,

20 b. to reimburse any state agency for amounts paid by the
21 state agency for hospital and medical expenses
22 incurred by the victim or victims, as a result of the
23 criminal act for which such person was convicted,
24 which reimbursement shall be made directly to the

1 state agency, with interest accruing thereon at the
2 rate of twelve percent (12%) per annum,

3 c. to engage in a term of community service without
4 compensation, according to a schedule consistent with
5 the employment and family responsibilities of the
6 person convicted,

7 d. to pay a reasonable sum into any trust fund,
8 established pursuant to the provisions of Sections 176
9 through 180.4 of Title 60 of the Oklahoma Statutes,
10 and which provides restitution payments by convicted
11 defendants to victims of crimes committed within this
12 state wherein such victim has incurred a financial
13 loss,

14 e. to confinement in the county jail for a period not to
15 exceed six (6) months,

16 f. to confinement as provided by law together with a term
17 of post-imprisonment community supervision for not
18 less than three (3) years of the total term allowed by
19 law for imprisonment, with or without restitution;
20 provided, however, the authority of this provision is
21 limited to Section 843.5 of Title 21 of the Oklahoma
22 Statutes when the offense involved sexual abuse or
23 sexual exploitation; Sections 681, 741 and 843.1 of
24 Title 21 of the Oklahoma Statutes when the offense

1 involved sexual abuse or sexual exploitation; and
2 Sections 865 et seq., 885, 886, 888, 891, 1021,
3 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
4 1123 of Title 21 of the Oklahoma Statutes,

5 g. to repay the reward or part of the reward paid by a
6 local certified crime stoppers program and the
7 Oklahoma Reward System. In determining whether the
8 defendant shall repay the reward or part of the
9 reward, the court shall consider the ability of the
10 defendant to make the payment, the financial hardship
11 on the defendant to make the required payment, and the
12 importance of the information to the prosecution of
13 the defendant as provided by the arresting officer or
14 the district attorney with due regard for the
15 confidentiality of the records of the local certified
16 crime stoppers program and the Oklahoma Reward System.
17 The court shall assess this repayment against the
18 defendant as a cost of prosecution. The term
19 "certified" means crime stoppers organizations that
20 annually meet the certification standards for crime
21 stoppers programs established by the Oklahoma Crime
22 Stoppers Association to the extent those standards do
23 not conflict with state statutes. The term "court"
24 refers to all municipal and district courts within

1 this state. The "Oklahoma Reward System" means the
2 reward program established by Section 150.18 of Title
3 74 of the Oklahoma Statutes,

4 h. to reimburse the Oklahoma State Bureau of
5 Investigation for costs incurred by that agency during
6 its investigation of the crime for which the defendant
7 pleaded guilty, nolo contendere or was convicted,
8 including compensation for laboratory, technical, or
9 investigation services performed by the Bureau if, in
10 the opinion of the court, the defendant is able to pay
11 without imposing manifest hardship on the defendant,
12 and if the costs incurred by the Bureau during the
13 investigation of the defendant's case may be
14 determined with reasonable certainty,

15 i. to reimburse the Oklahoma State Bureau of
16 Investigation and any authorized law enforcement
17 agency for all costs incurred by that agency for
18 cleaning up an illegal drug laboratory site for which
19 the defendant pleaded guilty, nolo contendere or was
20 convicted. The court clerk shall collect the amount
21 and may retain five percent (5%) of such monies to be
22 deposited in the Court Clerk Revolving Fund to cover
23 administrative costs and shall remit the remainder to
24 the Oklahoma State Bureau of Investigation to be

1 deposited in the OSBI Revolving Fund established by
2 Section 150.19a of Title 74 of the Oklahoma Statutes
3 or to the general fund wherein the other law
4 enforcement agency is located,

5 j. to pay a reasonable sum to the Crime Victims
6 Compensation Board, created by Section 142.2 et seq.
7 of Title 21 of the Oklahoma Statutes, for the benefit
8 of crime victims,

9 k. to reimburse the court fund for amounts paid to court-
10 appointed attorneys for representing the defendant in
11 the case in which the person is being sentenced,

12 l. to participate in an assessment and evaluation by an
13 assessment agency or assessment personnel certified by
14 the Department of Mental Health and Substance Abuse
15 Services pursuant to Section 3-460 of Title 43A of the
16 Oklahoma Statutes and, as determined by the
17 assessment, participate in an alcohol and drug
18 substance abuse course or treatment program or both,
19 pursuant to Sections 3-452 and 3-453 of Title 43A of
20 the Oklahoma Statutes, or as ordered by the court,

21 m. to be placed in a victims impact panel program, as
22 defined in subsection H of this section, or
23 victim/offender reconciliation program and payment of
24 a fee to the program of not less than Fifteen Dollars

1 (\$15.00) nor more than Sixty Dollars (\$60.00) as set
2 by the governing authority of the program to offset
3 the cost of participation by the defendant. Provided,
4 each victim/offender reconciliation program shall be
5 required to obtain a written consent form voluntarily
6 signed by the victim and defendant that specifies the
7 methods to be used to resolve the issues, the
8 obligations and rights of each person, and the
9 confidentiality of the proceedings. Volunteer
10 mediators and employees of a victim/offender
11 reconciliation program shall be immune from liability
12 and have rights of confidentiality as provided in
13 Section 1805 of Title 12 of the Oklahoma Statutes,
14 n. to install, at the expense of the defendant, an
15 ignition interlock device approved by the Board of
16 Tests for Alcohol and Drug Influence. The device
17 shall be installed upon every motor vehicle operated
18 by the defendant, and the court shall require that a
19 notation of this restriction be affixed to the
20 defendant's driver license. The restriction shall
21 remain on the driver license not exceeding two (2)
22 years to be determined by the court. The restriction
23 may be modified or removed only by order of the court
24 and notice of any modification order shall be given to

1 the Department of Public Safety. Upon the expiration
2 of the period for the restriction, the Department of
3 Public Safety shall remove the restriction without
4 further court order. Failure to comply with the order
5 to install an ignition interlock device or operating
6 any vehicle without a device during the period of
7 restriction shall be a violation of the sentence and
8 may be punished as deemed proper by the sentencing
9 court. As used in this paragraph, "ignition interlock
10 device" means a device that, without tampering or
11 intervention by another person, would prevent the
12 defendant from operating a motor vehicle if the
13 defendant has a blood or breath alcohol concentration
14 of two-hundredths (0.02) or greater,

15 o. to be confined by electronic monitoring administered
16 and supervised by the Department of Corrections or a
17 community sentence provider, and payment of a
18 monitoring fee to the supervising authority, not to
19 exceed Three Hundred Dollars (\$300.00) per month. Any
20 fees collected pursuant to this paragraph shall be
21 deposited with the appropriate supervising authority.
22 Any willful violation of an order of the court for the
23 payment of the monitoring fee shall be a violation of
24 the sentence and may be punished as deemed proper by

1 the sentencing court. As used in this paragraph,
2 "electronic monitoring" means confinement of the
3 defendant within a specified location or locations
4 with supervision by means of an electronic device
5 approved by the Department of Corrections which is
6 designed to detect if the defendant is in the court-
7 ordered location at the required times and which
8 records violations for investigation by a qualified
9 supervisory agency or person,

10 p. to perform one or more courses of treatment, education
11 or rehabilitation for any conditions, behaviors,
12 deficiencies or disorders which may contribute to
13 criminal conduct, including but not limited to alcohol
14 and substance abuse, mental health, emotional health,
15 physical health, propensity for violence, antisocial
16 behavior, personality or attitudes, deviant sexual
17 behavior, child development, parenting assistance, job
18 skills, vocational-technical skills, domestic
19 relations, literacy, education, or any other
20 identifiable deficiency which may be treated
21 appropriately in the community and for which a
22 certified provider or a program recognized by the
23 court as having significant positive impact exists in
24 the community. Any treatment, education or

- 1 rehabilitation provider required to be certified
2 pursuant to law or rule shall be certified by the
3 appropriate state agency or a national organization,
- 4 q. to submit to periodic testing for alcohol,
5 intoxicating substance, or controlled dangerous
6 substances by a qualified laboratory,
- 7 r. to pay a fee, costs for treatment, education,
8 supervision, participation in a program, or any
9 combination thereof as determined by the court, based
10 upon the defendant's ability to pay the fees or costs,
- 11 s. to be supervised by a Department of Corrections
12 employee, a private supervision provider, or other
13 person designated by the court,
- 14 t. to obtain positive behavior modeling by a trained
15 mentor,
- 16 u. to serve a term of confinement in a restrictive
17 housing facility available in the community,
- 18 v. to serve a term of confinement in the county jail at
19 night or during weekends pursuant to Section 991a-2 of
20 this title or for work release,
- 21 w. to obtain employment or participate in employment-
22 related activities,
- 23 x. to participate in mandatory day reporting to
24 facilities or persons for services, payments, duties

1 or person-to-person contacts as specified by the
2 court,

3 y. to pay day fines not to exceed fifty percent (50%) of
4 the net wages earned. For purposes of this paragraph,
5 "day fine" means the offender is ordered to pay an
6 amount calculated as a percentage of net daily wages
7 earned. The day fine shall be paid to the local
8 community sentencing system as reparation to the
9 community. Day fines shall be used to support the
10 local system,

11 z. to submit to blood or saliva testing as required by
12 subsection I of this section,

13 aa. to repair or restore property damaged by the
14 defendant's conduct, if the court determines the
15 defendant possesses sufficient skill to repair or
16 restore the property and the victim consents to the
17 repairing or restoring of the property,

18 bb. to restore damaged property in kind or payment of out-
19 of-pocket expenses to the victim, if the court is able
20 to determine the actual out-of-pocket expenses
21 suffered by the victim,

22 cc. to attend a victim-offender reconciliation program if
23 the victim agrees to participate and the offender is
24 deemed appropriate for participation,

1 dd. in the case of a person convicted of prostitution
2 pursuant to Section 1029 of Title 21 of the Oklahoma
3 Statutes, require such person to receive counseling
4 for the behavior which may have caused such person to
5 engage in prostitution activities. Such person may be
6 required to receive counseling in areas including but
7 not limited to alcohol and substance abuse, sexual
8 behavior problems, or domestic abuse or child abuse
9 problems,

10 ee. in the case of a sex offender sentenced after November
11 1, 1989, and required by law to register pursuant to
12 the Sex Offender Registration Act, the court shall
13 require the person to comply with sex offender
14 specific rules and conditions of supervision
15 established by the Department of Corrections and
16 require the person to participate in a treatment
17 program designed for the treatment of sex offenders
18 during the period of time while the offender is
19 subject to supervision by the Department of
20 Corrections. The treatment program shall include
21 polygraph examinations specifically designed for use
22 with sex offenders for purposes of supervision and
23 treatment compliance, and shall be administered not
24 less than each six (6) months during the period of

1 supervision. The examination shall be administered by
2 a certified licensed polygraph examiner. The
3 treatment program must be approved by the Department
4 of Corrections or the Department of Mental Health and
5 Substance Abuse Services. Such treatment shall be at
6 the expense of the defendant based on the defendant's
7 ability to pay,

8 ff. in addition to other sentencing powers of the court,
9 the court in the case of a defendant being sentenced
10 for a felony conviction for a violation of Section 2-
11 402 of Title 63 of the Oklahoma Statutes which
12 involves marijuana may require the person to
13 participate in a drug court program, if available. If
14 a drug court program is not available, the defendant
15 may be required to participate in a community
16 sanctions program, if available,

17 gg. in the case of a person convicted of any false or
18 bogus check violation, as defined in Section 1541.4 of
19 Title 21 of the Oklahoma Statutes, impose a fee of
20 Twenty-five Dollars (\$25.00) to the victim for each
21 check, and impose a bogus check fee to be paid to the
22 district attorney. The bogus check fee paid to the
23 district attorney shall be equal to the amount
24 assessed as court costs plus Twenty-five Dollars

1 (\$25.00) for each check upon filing of the case in
2 district court. This money shall be deposited in the
3 Bogus Check Restitution Program Fund as established in
4 subsection B of Section 114 of this title.

5 Additionally, the court may require the offender to
6 pay restitution and bogus check fees on any other
7 bogus check or checks that have been submitted to the
8 District Attorney Bogus Check Restitution Program, and

9 hh. any other provision specifically ordered by the court.

10 However, any such order for restitution, community service,
11 payment to a local certified crime stoppers program, payment to the
12 Oklahoma Reward System, or confinement in the county jail, or a
13 combination thereof, shall be made in conjunction with probation and
14 shall be made a condition of the suspended sentence.

15 However, unless under the supervision of the district attorney,
16 the offender shall be required to pay Forty Dollars (\$40.00) per
17 month to the district attorney during the first two (2) years of
18 probation to compensate the district attorney for the costs incurred
19 during the prosecution of the offender and for the additional work
20 of verifying the compliance of the offender with the rules and
21 conditions of his or her probation. The district attorney may waive
22 any part of this requirement in the best interests of justice. The
23 court shall not waive, suspend, defer or dismiss the costs of
24 prosecution in its entirety. However, if the court determines that

1 a reduction in the fine, costs and costs of prosecution is
2 warranted, the court shall equally apply the same percentage
3 reduction to the fine, costs and costs of prosecution owed by the
4 offender;

5 2. Impose a fine prescribed by law for the offense, with or
6 without probation or commitment and with or without restitution or
7 service as provided for in this section, Section 991a-4.1 of this
8 title or Section 227 of Title 57 of the Oklahoma Statutes;

9 3. Commit such person for confinement provided for by law with
10 or without restitution as provided for in this section;

11 4. Order the defendant to reimburse the Oklahoma State Bureau
12 of Investigation for costs incurred by that agency during its
13 investigation of the crime for which the defendant pleaded guilty,
14 nolo contendere or was convicted, including compensation for
15 laboratory, technical, or investigation services performed by the
16 Bureau if, in the opinion of the court, the defendant is able to pay
17 without imposing manifest hardship on the defendant, and if the
18 costs incurred by the Bureau during the investigation of the
19 defendant's case may be determined with reasonable certainty;

20 5. Order the defendant to reimburse the Oklahoma State Bureau
21 of Investigation for all costs incurred by that agency for cleaning
22 up an illegal drug laboratory site for which the defendant pleaded
23 guilty, nolo contendere or was convicted. The court clerk shall
24 collect the amount and may retain five percent (5%) of such monies

1 to be deposited in the Court Clerk Revolving Fund to cover
2 administrative costs and shall remit the remainder to the Oklahoma
3 State Bureau of Investigation to be deposited in the OSBI Revolving
4 Fund established by Section 150.19a of Title 74 of the Oklahoma
5 Statutes;

6 6. In the case of nonviolent felony offenses, sentence such
7 person to the Community Service Sentencing Program;

8 7. In addition to the other sentencing powers of the court, in
9 the case of a person convicted of operating or being in control of a
10 motor vehicle while the person was under the influence of alcohol,
11 other intoxicating substance, or a combination of alcohol or another
12 intoxicating substance, or convicted of operating a motor vehicle
13 while the ability of the person to operate such vehicle was impaired
14 due to the consumption of alcohol, require such person:

15 a. to participate in an alcohol and drug assessment and
16 evaluation by an assessment agency or assessment
17 personnel certified by the Department of Mental Health
18 and Substance Abuse Services pursuant to Section 3-460
19 of Title 43A of the Oklahoma Statutes and, as
20 determined by the assessment, participate in an
21 alcohol and drug substance abuse course or treatment
22 program or both, pursuant to Sections 3-452 and 3-453
23 of Title 43A of the Oklahoma Statutes,

24

1 b. to attend a victims impact panel program, as defined
2 in subsection H of this section, and to pay a fee of
3 not more than Sixty Dollars (\$60.00) as set by the
4 governing authority of the program and approved by the
5 court, to the program to offset the cost of
6 participation by the defendant, if in the opinion of
7 the court the defendant has the ability to pay such
8 fee. Additionally, the court may also require such
9 person to participate in a victims impact panel
10 program, as defined in subsection H of this section,
11 that is offered online and pay a fee that may exceed
12 One Hundred Dollars (\$100.00) as set by the governing
13 authority of the victims impact panel program and
14 approved by the court if, in the opinion of the court,
15 the defendant has the ability to pay such fee. For
16 persons deemed indigent by the court, the victims
17 impact panel program offered online may be provided at
18 no charge to such indigent person,

19 c. to both participate in the alcohol and drug substance
20 abuse course or treatment program, pursuant to
21 subparagraph a of this paragraph and attend a victims
22 impact panel program, pursuant to subparagraph b of
23 this paragraph,
24

1 d. to install, at the expense of the person, an ignition
2 interlock device approved by the Board of Tests for
3 Alcohol and Drug Influence, upon every motor vehicle
4 operated by such person and to require that a notation
5 of this restriction be affixed to the person's driver
6 license at the time of reinstatement of the license.
7 The restriction shall remain on the driver license for
8 such period as the court shall determine. The
9 restriction may be modified or removed by order of the
10 court and notice of the order shall be given to the
11 Department of Public Safety. Upon the expiration of
12 the period for the restriction, the Department of
13 Public Safety shall remove the restriction without
14 further court order. Failure to comply with the order
15 to install an ignition interlock device or operating
16 any vehicle without such device during the period of
17 restriction shall be a violation of the sentence and
18 may be punished as deemed proper by the sentencing
19 court, or

20 e. beginning January 1, 1993, to submit to electronically
21 monitored home detention administered and supervised
22 by the Department of Corrections, and to pay to the
23 Department a monitoring fee, not to exceed Seventy-
24 five Dollars (\$75.00) a month, to the Department of

1 Corrections, if in the opinion of the court the
2 defendant has the ability to pay such fee. Any fees
3 collected pursuant to this subparagraph shall be
4 deposited in the Department of Corrections Revolving
5 Fund. Any order by the court for the payment of the
6 monitoring fee, if willfully disobeyed, may be
7 enforced as an indirect contempt of court;

8 8. In addition to the other sentencing powers of the court, in
9 the case of a person convicted of prostitution pursuant to Section
10 1029 of Title 21 of the Oklahoma Statutes, require such person to
11 receive counseling for the behavior which may have caused such
12 person to engage in prostitution activities. Such person may be
13 required to receive counseling in areas including but not limited to
14 alcohol and substance abuse, sexual behavior problems, or domestic
15 abuse or child abuse problems;

16 9. In addition to the other sentencing powers of the court, in
17 the case of a person convicted of any crime related to domestic
18 abuse, as defined in Section 60.1 of this title, the court may
19 require the defendant to undergo the treatment or participate in the
20 counseling services necessary to bring about the cessation of
21 domestic abuse against the victim. The defendant may be required to
22 pay all or part of the cost of the treatment or counseling services;

23 10. In addition to the other sentencing powers of the court,
24 the court, in the case of a sex offender sentenced after November 1,

1 1989, and required by law to register pursuant to the Sex Offenders
2 Registration Act, shall require the person to participate in a
3 treatment program designed specifically for the treatment of sex
4 offenders, if available. The treatment program will include
5 polygraph examinations specifically designed for use with sex
6 offenders for the purpose of supervision and treatment compliance,
7 provided the examination is administered by a certified licensed
8 polygraph examiner. The treatment program must be approved by the
9 Department of Corrections or the Department of Mental Health and
10 Substance Abuse Services. Such treatment shall be at the expense of
11 the defendant based on the defendant's ability to pay;

12 11. In addition to the other sentencing powers of the court,
13 the court, in the case of a person convicted of child abuse or
14 neglect, as defined in Section 1-1-105 of Title 10A of the Oklahoma
15 Statutes, may require the person to undergo treatment or to
16 participate in counseling services. The defendant may be required
17 to pay all or part of the cost of the treatment or counseling
18 services;

19 12. In addition to the other sentencing powers of the court,
20 the court, in the case of a person convicted of cruelty to animals
21 pursuant to Section 1685 of Title 21 of the Oklahoma Statutes, may
22 require the person to pay restitution to animal facilities for
23 medical care and any boarding costs of victimized animals;

24

1 13. In addition to the other sentencing powers of the court, a
2 sex offender who is habitual or aggravated as defined by Section 584
3 of Title 57 of the Oklahoma Statutes and who is required to register
4 as a sex offender pursuant to the Oklahoma Sex Offenders
5 Registration Act shall be supervised by the Department of
6 Corrections for the duration of the registration period and shall be
7 assigned to a global position monitoring device by the Department of
8 Corrections for the duration of the registration period. The cost
9 of such monitoring device shall be reimbursed by the offender;

10 14. In addition to the other sentencing powers of the court, in
11 the case of a sex offender who is required by law to register
12 pursuant to the Sex Offenders Registration Act, the court may
13 prohibit the person from accessing or using any Internet social
14 networking web site that has the potential or likelihood of allowing
15 the sex offender to have contact with any child who is under the age
16 of eighteen (18) years; or

17 15. In addition to the other sentencing powers of the court, in
18 the case of a sex offender who is required by law to register
19 pursuant to the Sex Offenders Registration Act, the court shall
20 require the person to register any electronic mail address
21 information, instant message, chat or other Internet communication
22 name or identity information that the person uses or intends to use
23 while accessing the Internet or used for other purposes of social
24 networking or other similar Internet communication.

1 B. Notwithstanding any other provision of law, any person who
2 is found guilty of a violation of any provision of Section 761 or
3 11-902 of Title 47 of the Oklahoma Statutes or any person pleading
4 guilty or nolo contendere for a violation of any provision of such
5 sections shall be ordered to participate in, prior to sentencing, an
6 alcohol and drug assessment and evaluation by an assessment agency
7 or assessment personnel certified by the Department of Mental Health
8 and Substance Abuse Services for the purpose of evaluating the
9 receptivity to treatment and prognosis of the person. The court
10 shall order the person to reimburse the agency or assessor for the
11 evaluation. The fee shall be the amount provided in subsection C of
12 Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation
13 shall be conducted at a certified assessment agency, the office of a
14 certified assessor or at another location as ordered by the court.
15 The agency or assessor shall, within seventy-two (72) hours from the
16 time the person is assessed, submit a written report to the court
17 for the purpose of assisting the court in its final sentencing
18 determination. No person, agency or facility operating an alcohol
19 and drug substance abuse evaluation program certified by the
20 Department of Mental Health and Substance Abuse Services shall
21 solicit or refer any person evaluated pursuant to this subsection
22 for any treatment program or alcohol and drug substance abuse
23 service in which such person, agency or facility has a vested
24 interest; however, this provision shall not be construed to prohibit

1 the court from ordering participation in or any person from
2 voluntarily utilizing a treatment program or alcohol and drug
3 substance abuse service offered by such person, agency or facility.
4 If a person is sentenced to the custody of the Department of
5 Corrections and the court has received a written evaluation report
6 pursuant to this subsection, the report shall be furnished to the
7 Department of Corrections with the judgment and sentence. Any
8 evaluation report submitted to the court pursuant to this subsection
9 shall be handled in a manner which will keep such report
10 confidential from the general public's review. Nothing contained in
11 this subsection shall be construed to prohibit the court from
12 ordering judgment and sentence in the event the defendant fails or
13 refuses to comply with an order of the court to obtain the
14 evaluation required by this subsection.

15 C. When sentencing a person convicted of a crime, the court
16 shall first consider a program of restitution for the victim, as
17 well as imposition of a fine or incarceration of the offender. The
18 provisions of paragraph 1 of subsection A of this section shall not
19 apply to defendants being sentenced upon their third or subsequent
20 to their third conviction of a felony or, beginning January 1, 1993,
21 to defendants being sentenced for their second or subsequent felony
22 conviction for violation of Section 11-902 of Title 47 of the
23 Oklahoma Statutes, except as otherwise provided in this subsection.
24 In the case of a person being sentenced for their second or

1 subsequent felony conviction for violation of Section 11-902 of
2 Title 47 of the Oklahoma Statutes, the court may sentence the person
3 pursuant to the provisions of paragraph 1 of subsection A of this
4 section if the court orders the person to submit to electronically
5 monitored home detention administered and supervised by the
6 Department of Corrections pursuant to subparagraph e of paragraph 7
7 of subsection A of this section. Provided, the court may waive
8 these prohibitions upon written application of the district
9 attorney. Both the application and the waiver shall be made part of
10 the record of the case.

11 D. When sentencing a person convicted of a crime, the judge
12 shall consider any victims impact statements if submitted to the
13 jury, or the judge in the event a jury is waived.

14 E. Probation, for purposes of subsection A of this section, is
15 a procedure by which a defendant found guilty of a crime, whether
16 upon a verdict or plea of guilty or upon a plea of nolo contendere,
17 is released by the court subject to conditions imposed by the court
18 and subject to supervision by the Department of Corrections, a
19 private supervision provider or other person designated by the
20 court. Such supervision shall be initiated upon an order of
21 probation from the court, and shall not exceed two (2) years, unless
22 a petition alleging a violation of any condition of deferred
23 judgment or seeking revocation of the suspended sentence is filed
24 during the supervision, or as otherwise provided by law. In the

1 case of a person convicted of a sex offense, supervision shall begin
2 immediately upon release from incarceration or if parole is granted
3 and shall not be limited to two (2) years. Provided further, any
4 supervision provided for in this section may be extended for a
5 period not to exceed the expiration of the maximum term or terms of
6 the sentence upon a determination by the court or the Division of
7 Probation and Parole of the Department of Corrections that the best
8 interests of the public and the release will be served by an
9 extended period of supervision.

10 F. The Department of Corrections, or such other agency as the
11 court may designate, shall be responsible for the monitoring and
12 administration of the restitution and service programs provided for
13 by subparagraphs a, c, and d of paragraph 1 of subsection A of this
14 section, and shall ensure that restitution payments are forwarded to
15 the victim and that service assignments are properly performed.

16 G. 1. The Department of Corrections is hereby authorized,
17 subject to funds available through appropriation by the Legislature,
18 to contract with counties for the administration of county Community
19 Service Sentencing Programs.

20 2. Any offender eligible to participate in the Program pursuant
21 to this section shall be eligible to participate in a county
22 Program; provided, participation in county-funded Programs shall not
23 be limited to offenders who would otherwise be sentenced to
24 confinement with the Department of Corrections.

1 3. The Department shall establish criteria and specifications
2 for contracts with counties for such Programs. A county may apply
3 to the Department for a contract for a county-funded Program for a
4 specific period of time. The Department shall be responsible for
5 ensuring that any contracting county complies in full with
6 specifications and requirements of the contract. The contract shall
7 set appropriate compensation to the county for services to the
8 Department.

9 4. The Department is hereby authorized to provide technical
10 assistance to any county in establishing a Program, regardless of
11 whether the county enters into a contract pursuant to this
12 subsection. Technical assistance shall include appropriate
13 staffing, development of community resources, sponsorship,
14 supervision and any other requirements.

15 5. The Department shall annually make a report to the Governor,
16 the President Pro Tempore of the Senate and the Speaker of the House
17 on the number of such Programs, the number of participating
18 offenders, the success rates of each Program according to criteria
19 established by the Department and the costs of each Program.

20 H. As used in this section:

21 1. "Ignition interlock device" means a device that, without
22 tampering or intervention by another person, would prevent the
23 defendant from operating a motor vehicle if the defendant has a
24

1 blood or breath alcohol concentration of two-hundredths (0.02) or
2 greater;

3 2. "Electronically monitored home detention" means
4 incarceration of the defendant within a specified location or
5 locations with monitoring by means of a device approved by the
6 Department of Corrections that detects if the person leaves the
7 confines of any specified location; and

8 3. "Victims impact panel program" means a program conducted by
9 a corporation registered with the Secretary of State in Oklahoma for
10 the purpose of operating a victims impact panel program. The
11 program shall include live presentations from presenters who will
12 share personal stories with participants about how alcohol, drug
13 abuse, the operation of a motor vehicle while using an electronic
14 communication device or the illegal conduct of others has personally
15 impacted the lives of the presenters. "Victims impact panel
16 program" also means a program offered online with at least ten
17 personal stories from victims and offenders about how alcohol, drug
18 abuse and illegal conduct has personally impacted the victims and
19 offenders. Victims impact panel programs offered online shall
20 provide a system for testing for attention and comprehension of the
21 participant and a system for verifying the identity of the person
22 participating in the panel program. A victims impact panel program
23 shall be attended by persons who have committed the offense of
24 driving, operating or being in actual physical control of a motor

1 vehicle while under the influence of alcohol or other intoxicating
2 substance, operating a motor vehicle while the ability of the person
3 to operate such vehicle was impaired due to the consumption of
4 alcohol or any other substance or operating a motor vehicle while
5 using an electronic device. Persons attending a victims impact
6 panel program shall be required to pay a fee of not more than Sixty
7 Dollars (\$60.00) to the provider of the program. Persons
8 participating in a victims impact panel program offered online shall
9 be required to pay a fee that may exceed One Hundred Dollars
10 (\$100.00) to the provider of the program; however, persons deemed
11 indigent by the court may participate in the program at no charge to
12 the indigent person. A certificate of completion shall be issued to
13 the person upon satisfying the attendance and fee requirements of
14 the victims impact panel program. The certificate of completion
15 shall contain the business identification number of the program
16 provider. A victims impact panel program shall not be provided by
17 any certified assessment agency or certified assessor unless the
18 assessment agency or certified assessor has been granted an
19 exemption by the Commissioner of the Department of Mental Health and
20 Substance Abuse Services. The provider of the victims impact panel
21 program shall carry general liability insurance and maintain an
22 accurate accounting of all business transactions and funds received
23 in relation to the victims impact panel program. The provider of
24

1 the victims impact panel program shall annually provide to the
2 Administrative Office of the Courts the following:

- 3 a. proof of registration with the Oklahoma Secretary of
4 State,
- 5 b. proof of general liability insurance,
- 6 c. end-of-year financial statements prepared by a
7 certified public accountant, and
- 8 d. a copy of federal income tax returns filed with the
9 Internal Revenue Service.

10 I. A person convicted of a felony offense or receiving any form
11 of probation for an offense in which registration is required
12 pursuant to the Sex Offenders Registration Act, shall submit to
13 deoxyribonucleic acid DNA testing for law enforcement identification
14 purposes in accordance with Section 150.27 of Title 74 of the
15 Oklahoma Statutes and the rules promulgated by the Oklahoma State
16 Bureau of Investigation for the OSBI Combined DNA Index System
17 (CODIS) Database. Subject to the availability of funds, any person
18 convicted of a misdemeanor offense of assault and battery, domestic
19 abuse, stalking, possession of a controlled substance prohibited
20 under Schedule IV of the Uniform Controlled Dangerous Substances
21 Act, outraging public decency, resisting arrest, escape or
22 attempting to escape, eluding a police officer, Peeping Tom,
23 pointing a firearm, threatening an act of violence, breaking and
24 entering a dwelling place, destruction of property, negligent

1 homicide, or causing a personal injury accident while driving under
2 the influence of any intoxicating substance, or any alien unlawfully
3 present under federal immigration law, upon arrest, shall submit to
4 deoxyribonucleic acid DNA testing for law enforcement identification
5 purposes in accordance with Section 150.27 of Title 74 of the
6 Oklahoma Statutes and the rules promulgated by the Oklahoma State
7 Bureau of Investigation for the OSBI Combined DNA Index System
8 (CODIS) Database. Any defendant sentenced to probation shall be
9 required to submit to testing within thirty (30) days of sentencing
10 either to the Department of Corrections or to the county sheriff or
11 other peace officer as directed by the court. Defendants who are
12 sentenced to a term of incarceration shall submit to testing in
13 accordance with Section 530.1 of Title 57 of the Oklahoma Statutes,
14 for those defendants who enter the custody of the Department of
15 Corrections or to the county sheriff, for those defendants sentenced
16 to incarceration in a county jail. Convicted individuals who have
17 previously submitted to DNA testing under this section and for whom
18 a valid sample is on file in the OSBI Combined DNA Index System
19 (CODIS) Database at the time of sentencing shall not be required to
20 submit to additional testing. Except as required by the Sex
21 Offenders Registration Act, a deferred judgment does not require
22 submission to deoxyribonucleic acid testing.

23 Any person who is incarcerated in the custody of the Department
24 of Corrections after July 1, 1996, and who has not been released

1 before January 1, 2006, shall provide a blood or saliva sample prior
2 to release. Every person subject to DNA testing after January 1,
3 2006, whose sentence does not include a term of confinement with the
4 Department of Corrections shall submit a blood or saliva sample.
5 Every person subject to DNA testing who is sentenced to unsupervised
6 probation or otherwise not supervised by the Department of
7 Corrections shall submit for blood or saliva testing to the sheriff
8 of the sentencing county.

9 J. Samples of blood or saliva for DNA testing required by
10 subsection I of this section shall be taken by employees or
11 contractors of the Department of Corrections, peace officers, or the
12 county sheriff or employees or contractors of the sheriff's office.
13 The individuals shall be properly trained to collect blood or saliva
14 samples. Persons collecting blood or saliva for DNA testing
15 pursuant to this section shall be immune from civil liabilities
16 arising from this activity. All collectors of DNA samples shall
17 ensure the collection of samples are mailed to the Oklahoma State
18 Bureau of Investigation within ten (10) days of the time the subject
19 appears for testing or within ten (10) days of the date the subject
20 comes into physical custody to serve a term of incarceration. All
21 collectors of DNA samples shall use sample kits provided by the OSBI
22 and procedures promulgated by the OSBI. Persons subject to DNA
23 testing who are not received at the Lexington Assessment and
24 Reception Center shall be required to pay a fee of Fifteen Dollars

1 (\$15.00) to the agency collecting the sample for submission to the
2 OSBI Combined DNA Index System (CODIS) Database. Any fees collected
3 pursuant to this subsection shall be deposited in the revolving
4 account or the service fee account of the collection agency or
5 department.

6 K. When sentencing a person who has been convicted of a crime
7 that would subject that person to the provisions of the Sex
8 Offenders Registration Act, neither the court nor the district
9 attorney shall be allowed to waive or exempt such person from the
10 registration requirements of the Sex Offenders Registration Act.

11 SECTION 2. AMENDATORY 22 O.S. 2011, Section 991c, as
12 last amended by Section 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
13 2018, Section 991c), is amended to read as follows:

14 Section 991c. A. Upon a verdict or plea of guilty or upon a
15 plea of nolo contendere, but before a judgment of guilt, the court
16 may, without entering a judgment of guilt and with the consent of
17 the defendant, defer further proceedings upon the specific
18 conditions prescribed by the court not to exceed a seven-year
19 period, except as authorized under subsection B of this section.
20 The court shall first consider restitution among the various
21 conditions it may prescribe. The court may also consider ordering
22 the defendant to:

- 23 1. Pay court costs;

24

1 2. Pay an assessment in lieu of any fine authorized by law for
2 the offense;

3 3. Pay any other assessment or cost authorized by law;

4 4. Engage in a term of community service without compensation,
5 according to a schedule consistent with the employment and family
6 responsibilities of the defendant;

7 5. County jail confinement for a period not to exceed ninety
8 (90) days or the maximum amount of jail time provided for the
9 offense, if it is less than ninety (90) days;

10 6. Pay an amount as reimbursement for reasonable attorney fees,
11 to be paid into the court fund, if a court-appointed attorney has
12 been provided to defendant;

13 7. Be supervised in the community for a period not to exceed
14 eighteen (18) months, unless a petition alleging violation of any
15 condition of deferred judgment is filed during the period of
16 supervision. As a condition of any supervision, the defendant shall
17 be required to pay a supervision fee of Forty Dollars (\$40.00) per
18 month. The supervision fee shall be waived in whole or part by the
19 supervisory agency when the accused is indigent. No person shall be
20 denied supervision based solely on the inability of the person to
21 pay a fee;

22 8. Pay into the court fund a monthly amount not exceeding Forty
23 Dollars (\$40.00) per month during any period during which the
24 proceedings are deferred when the defendant is not to be supervised

1 in the community. The total amount to be paid into the court fund
2 shall be established by the court and shall not exceed the amount of
3 the maximum fine authorized by law for the offense;

4 9. Make other reparations to the community or victim as
5 required and deemed appropriate by the court;

6 10. Order any conditions which can be imposed for a suspended
7 sentence pursuant to paragraph 1 of subsection A of Section 991a of
8 this title; or

9 11. Any combination of the above provisions.

10 However, unless under the supervision of the district attorney,
11 the offender shall be required to pay Forty Dollars (\$40.00) per
12 month to the district attorney during the first two (2) years of
13 probation to compensate the district attorney for the costs incurred
14 during the prosecution of the offender and for the additional work
15 of verifying the compliance of the offender with the rules and
16 conditions of his or her probation. The district attorney may waive
17 any part of this requirement in the best interests of justice. The
18 court shall not waive, suspend, defer or dismiss the costs of
19 prosecution in its entirety. However, if the court determines that
20 a reduction in the fine, costs and costs of prosecution is
21 warranted, the court shall equally apply the same percentage
22 reduction to the fine, costs and costs of prosecution owed by the
23 offender.

24

1 B. When the court has ordered restitution as a condition of
2 supervision as provided for in subsection A of this section and that
3 condition has not been satisfied, the court may, at any time prior
4 to the termination or expiration of the supervision period, order an
5 extension of supervision for a period not to exceed three (3) years.

6 C. In addition to any conditions of supervision provided for in
7 subsection A of this section, the court shall, in the case of a
8 person before the court for the offense of operating or being in
9 control of a motor vehicle while the person was under the influence
10 of alcohol, other intoxicating substance, or a combination of
11 alcohol and another intoxicating substance, or who is before the
12 court for the offense of operating a motor vehicle while the ability
13 of the person to operate such vehicle was impaired due to the
14 consumption of alcohol, require the person to participate in an
15 alcohol and drug substance abuse evaluation program offered by a
16 facility or qualified practitioner certified by the Department of
17 Mental Health and Substance Abuse Services for the purpose of
18 evaluating the receptivity to treatment and prognosis of the person.
19 The court shall order the person to reimburse the facility or
20 qualified practitioner for the evaluation. The Department of Mental
21 Health and Substance Abuse Services shall establish a fee schedule,
22 based upon the ability of a person to pay, provided the fee for an
23 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
24 evaluation shall be conducted at a certified facility, the office of

1 a qualified practitioner or at another location as ordered by the
2 court. The facility or qualified practitioner shall, within
3 seventy-two (72) hours from the time the person is assessed, submit
4 a written report to the court for the purpose of assisting the court
5 in its determination of conditions for deferred sentence. No
6 person, agency or facility operating an alcohol and drug substance
7 abuse evaluation program certified by the Department of Mental
8 Health and Substance Abuse Services shall solicit or refer any
9 person evaluated pursuant to this subsection for any treatment
10 program or alcohol and drug substance abuse service in which the
11 person, agency or facility has a vested interest; however, this
12 provision shall not be construed to prohibit the court from ordering
13 participation in or any person from voluntarily utilizing a
14 treatment program or alcohol and drug substance abuse service
15 offered by such person, agency or facility. Any evaluation report
16 submitted to the court pursuant to this subsection shall be handled
17 in a manner which will keep the report confidential from review by
18 the general public. Nothing contained in this subsection shall be
19 construed to prohibit the court from ordering judgment and sentence
20 in the event the defendant fails or refuses to comply with an order
21 of the court to obtain the evaluation required by this subsection.
22 As used in this subsection, "qualified practitioner" means a person
23 with at least a bachelor's degree in substance abuse treatment,
24 mental health or a related health care field and at least two (2)

1 years of experience in providing alcohol abuse treatment, other drug
2 abuse treatment, or both alcohol and other drug abuse treatment who
3 is certified each year by the Department of Mental Health and
4 Substance Abuse Services to provide these assessments. However, any
5 person who does not meet the requirements for a qualified
6 practitioner as defined herein, but who has been previously
7 certified by the Department of Mental Health and Substance Abuse
8 Services to provide alcohol or drug treatment or assessments, shall
9 be considered a qualified practitioner provided all education,
10 experience and certification requirements stated herein are met by
11 September 1, 1995. The court may also require the person to
12 participate in one or both of the following:

13 1. An alcohol and drug substance abuse course, pursuant to
14 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and

15 2. A victims impact panel program, as defined in subsection H
16 of Section 991a of this title, if such a program is offered in the
17 county where the judgment is rendered. The defendant shall be
18 required to pay a fee of not less than Fifteen Dollars (\$15.00) nor
19 more than Sixty Dollars (\$60.00) as set by the governing authority
20 of the program and approved by the court to the victims impact panel
21 program to offset the cost of participation by the defendant, if in
22 the opinion of the court the defendant has the ability to pay such
23 fee. Additionally, the court may also require such person to
24 participate in a victims impact panel program, as defined in

1 subsection H of Section 991a of this title, that is offered online
2 and pay a fee that may exceed One Hundred Dollars (\$100.00) as set
3 by the governing authority of the victims impact panel program and
4 approved by the court if, in the opinion of the court, the defendant
5 has the ability to pay such fee. For persons deemed indigent by the
6 court, the victims impact panel program offered online may be
7 provided at no charge to such indigent person.

8 D. Upon completion of the conditions of the deferred judgment,
9 and upon a finding by the court that the conditions have been met
10 and all fines, fees, and monetary assessments have been paid as
11 ordered, the defendant shall be discharged without a court judgment
12 of guilt, and the court shall order the verdict or plea of guilty or
13 plea of nolo contendere to be expunged from the record and the
14 charge shall be dismissed with prejudice to any further action. The
15 procedure to expunge the record of the defendant shall be as
16 follows:

17 1. All references to the name of the defendant shall be deleted
18 from the docket sheet;

19 2. The public index of the filing of the charge shall be
20 expunged by deletion, mark-out or obliteration;

21 3. Upon expungement, the court clerk shall keep a separate
22 confidential index of case numbers and names of defendants which
23 have been obliterated pursuant to the provisions of this section;

24

1 4. No information concerning the confidential file shall be
2 revealed or released, except upon written order of a judge of the
3 district court or upon written request by the named defendant to the
4 court clerk for the purpose of updating the criminal history record
5 of the defendant with the Oklahoma State Bureau of Investigation;
6 and

7 5. Defendants qualifying under Section 18 of this title may
8 petition the court to have the filing of the indictment and the
9 dismissal expunged from the public index and docket sheet. This
10 section shall not be mutually exclusive of Section 18 of this title.

11 Records expunged pursuant to this subsection shall be sealed to
12 the public but not to law enforcement agencies for law enforcement
13 purposes. Records expunged pursuant to this subsection shall be
14 admissible in any subsequent criminal prosecution to prove the
15 existence of a prior conviction or prior deferred judgment without
16 the necessity of a court order requesting the unsealing of such
17 records.

18 E. The provisions of subsection D of this section shall be
19 retroactive.

20 F. Whenever a judgment has been deferred by the court according
21 to the provisions of this section, deferred judgment may not be
22 accelerated for any technical violation unless a petition setting
23 forth the grounds for such acceleration is filed by the district
24 attorney with the clerk of the sentencing court and competent

1 evidence justifying the acceleration of the judgment is presented to
2 the court at a hearing to be held for that purpose. The hearing
3 shall be held not more than twenty (20) days after the entry of the
4 plea of not guilty to the petition, unless waived by both the state
5 and the defendant. Any acceleration of a deferred sentence based on
6 a technical violation shall not exceed ninety (90) days for a first
7 acceleration or five (5) years for a second or subsequent
8 acceleration.

9 G. Upon any violation of the deferred judgment, other than a
10 technical violation, the court may enter a judgment of guilt and
11 proceed as provided in Section 991a of this title or may modify any
12 condition imposed. Provided, however, if the deferred judgment is
13 for a felony offense, and the defendant commits another felony
14 offense, the defendant shall not be allowed bail pending appeal.

15 H. The deferred judgment procedure described in this section
16 shall apply only to defendants who have not been previously
17 convicted of a felony offense and have not received more than one
18 deferred judgment for a felony offense within the ten (10) years
19 previous to the commission of the pending offense.

20 Provided, the court may waive this prohibition upon written
21 application of the district attorney. Both the application and the
22 waiver shall be made a part of the record of the case.

23 I. The deferred judgment procedure described in this section
24 shall not apply to defendants found guilty or who plead guilty or

1 nolo contendere to a sex offense required by law to register
2 pursuant to the Sex Offenders Registration Act.

3 J. All defendants who are supervised pursuant to this section
4 shall be subject to the sanction process as established in
5 subsection ~~B~~ D of Section 991b of this title.

6 SECTION 3. AMENDATORY 47 O.S. 2011, Section 11-902, as
7 last amended by Section 1, Chapter 61, O.S.L. 2018 (47 O.S. Supp.
8 2018, Section 11-902), is amended to read as follows:

9 Section 11-902. A. It is unlawful and punishable as provided
10 in this section for any person to drive, operate, or be in actual
11 physical control of a motor vehicle within this state, whether upon
12 public roads, highways, streets, turnpikes, other public places or
13 upon any private road, street, alley or lane which provides access
14 to one or more single or multi-family dwellings, who:

15 1. Has a blood or breath alcohol concentration, as defined in
16 Section 756 of this title, of eight-hundredths (0.08) or more at the
17 time of a test of such person's blood or breath administered within
18 two (2) hours after the arrest of such person;

19 2. Is under the influence of alcohol;

20 3. Has any amount of a Schedule I chemical or controlled
21 substance, as defined in Section 2-204 of Title 63 of the Oklahoma
22 Statutes, or one of its metabolites or analogs in the person's
23 blood, saliva, urine or any other bodily fluid at the time of a test
24

1 of such person's blood, saliva, urine or any other bodily fluid
2 administered within two (2) hours after the arrest of such person;

3 4. Is under the influence of any intoxicating substance other
4 than alcohol which may render such person incapable of safely
5 driving or operating a motor vehicle; or

6 5. Is under the combined influence of alcohol and any other
7 intoxicating substance which may render such person incapable of
8 safely driving or operating a motor vehicle.

9 B. The fact that any person charged with a violation of this
10 section is or has been lawfully entitled to use alcohol or a
11 controlled dangerous substance or any other intoxicating substance
12 shall not constitute a defense against any charge of violating this
13 section.

14 C. 1. Any person who is convicted of a violation of the
15 provisions of this section shall be guilty of a misdemeanor for the
16 first offense and shall:

- 17 a. participate in an assessment and evaluation pursuant
18 to subsection G of this section and shall follow all
19 recommendations made in the assessment and evaluation,
20 b. be punished by imprisonment in jail for not less than
21 ten (10) days nor more than one (1) year, and
22 c. be fined not more than One Thousand Dollars
23 (\$1,000.00).

24

1 2. Any person who, having been convicted of or having received
2 deferred judgment for a violation of this section or a violation
3 pursuant to the provisions of any law of this state or another state
4 prohibiting the offenses provided in this section, Section 11-904 of
5 this title or paragraph 4 of subsection A of Section 852.1 of Title
6 21 of the Oklahoma Statutes, or having a prior conviction in a
7 municipal criminal court of record for the violation of a municipal
8 ordinance prohibiting the offense provided for in this section
9 commits a subsequent violation of this section within ten (10) years
10 of the date following the completion of the execution of said
11 sentence or deferred judgment shall, upon conviction, be guilty of a
12 felony and shall participate in an assessment and evaluation
13 pursuant to subsection G of this section and shall be sentenced to:
14 a. follow all recommendations made in the assessment and
15 evaluation for treatment at the defendant's expense,
16 or
17 b. placement in the custody of the Department of
18 Corrections for not less than one (1) year and not to
19 exceed five (5) years and a fine of not more than Two
20 Thousand Five Hundred Dollars (\$2,500.00), or
21 c. treatment, imprisonment and a fine within the
22 limitations prescribed in subparagraphs a and b of
23 this paragraph.
24

1 However, if the treatment in subsection G of this section does
2 not include residential or inpatient treatment for a period of not
3 less than five (5) days, the person shall serve a term of
4 imprisonment of at least five (5) days.

5 3. Any person who commits a violation of this section after
6 having been convicted of a felony offense pursuant to the provisions
7 of this section or a violation pursuant to the provisions of any law
8 of this state or another state prohibiting the offenses provided for
9 in this section, Section 11-904 of this title or paragraph 4 of
10 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes
11 shall be guilty of a felony and participate in an assessment and
12 evaluation pursuant to subsection G of this section and shall be
13 sentenced to:

- 14 a. follow all recommendations made in the assessment and
15 evaluation for treatment at the defendant's expense,
16 two hundred forty (240) hours of community service and
17 use of an ignition interlock device, as provided by
18 subparagraph n of paragraph 1 of subsection A of
19 Section 991a of Title 22 of the Oklahoma Statutes, or
- 20 b. placement in the custody of the Department of
21 Corrections for not less than one (1) year and not to
22 exceed ten (10) years and a fine of not more than Five
23 Thousand Dollars (\$5,000.00), or

24

1 c. treatment, imprisonment and a fine within the
2 limitations prescribed in subparagraphs a and b of
3 this paragraph.

4 However, if the treatment in subsection G of this section does
5 not include residential or inpatient treatment for a period of not
6 less than ten (10) days, the person shall serve a term of
7 imprisonment of at least ten (10) days.

8 4. Any person who commits a violation of this section after
9 having been twice convicted of a felony offense pursuant to the
10 provisions of this section or a violation pursuant to the provisions
11 of any law of this state or another state prohibiting the offenses
12 provided for in this section, Section 11-904 of this title or
13 paragraph 4 of subsection A of Section 852.1 of Title 21 of the
14 Oklahoma Statutes shall be guilty of a felony and participate in an
15 assessment and evaluation pursuant to subsection G of this section
16 and shall be sentenced to:

17 a. follow all recommendations made in the assessment and
18 evaluation for treatment at the defendant's expense,
19 followed by not less than one (1) year of supervision
20 and periodic testing at the defendant's expense, four
21 hundred eighty (480) hours of community service, and
22 use of an ignition interlock device, as provided by
23 subparagraph n of paragraph 1 of subsection A of
24

1 Section 991a of Title 22 of the Oklahoma Statutes, for
2 a minimum of thirty (30) days, or

3 b. placement in the custody of the Department of
4 Corrections for not less than one (1) year and not to
5 exceed twenty (20) years and a fine of not more than
6 Five Thousand Dollars (\$5,000.00), or

7 c. treatment, imprisonment and a fine within the
8 limitations prescribed in subparagraphs a and b of
9 this paragraph.

10 However, if the person does not undergo residential or inpatient
11 treatment pursuant to subsection G of this section the person shall
12 serve a term of imprisonment of at least ten (10) days.

13 5. Any person who, after a previous conviction of a violation
14 of murder in the second degree or manslaughter in the first degree
15 in which the death was caused as a result of driving under the
16 influence of alcohol or other intoxicating substance, is convicted
17 of a violation of this section shall be guilty of a felony and shall
18 be punished by imprisonment in the custody of the Department of
19 Corrections for not less than five (5) years and not to exceed
20 twenty (20) years, and a fine of not more than Ten Thousand Dollars
21 (\$10,000.00).

22 6. Provided, however, a conviction from another state shall not
23 be used to enhance punishment pursuant to the provisions of this
24

1 subsection if that conviction is based on a blood or breath alcohol
2 concentration of less than eight-hundredths (0.08).

3 7. In any case in which a defendant is charged with driving
4 under the influence of alcohol or other intoxicating substance
5 offense within any municipality with a municipal court other than a
6 court of record, the charge shall be presented to the county's
7 district attorney and filed with the district court of the county
8 within which the municipality is located.

9 D. Any person who is convicted of a violation of driving under
10 the influence with a blood or breath alcohol concentration of
11 fifteen-hundredths (0.15) or more pursuant to this section shall be
12 deemed guilty of aggravated driving under the influence. A person
13 convicted of aggravated driving under the influence shall
14 participate in an assessment and evaluation pursuant to subsection G
15 of this section and shall comply with all recommendations for
16 treatment. Such person shall be sentenced as provided in paragraph
17 1, 2, 3, 4 or 5 of subsection C of this section and to:

18 1. Not less than one (1) year of supervision and periodic
19 testing at the defendant's expense; and

20 2. An ignition interlock device or devices, as provided by
21 subparagraph n of paragraph 1 of subsection A of Section 991a of
22 Title 22 of the Oklahoma Statutes, for a minimum of ninety (90)
23 days.

24

1 E. When a person is sentenced to imprisonment in the custody of
2 the Department of Corrections, the person shall be processed through
3 the Lexington Assessment and Reception Center or at a place
4 determined by the Director of the Department of Corrections. The
5 Department of Corrections shall classify and assign the person to
6 one or more of the following:

7 1. The Department of Mental Health and Substance Abuse Services
8 pursuant to paragraph 1 of subsection A of Section 612 of Title 57
9 of the Oklahoma Statutes; or

10 2. A correctional facility operated by the Department of
11 Corrections with assignment to substance abuse treatment.
12 Successful completion of a Department-of-Corrections-approved
13 substance abuse treatment program shall satisfy the recommendation
14 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
15 course or treatment program or both. Successful completion of an
16 approved Department of Corrections substance abuse treatment program
17 may precede or follow the required assessment.

18 F. The Department of Public Safety is hereby authorized to
19 reinstate any suspended or revoked driving privilege when the person
20 meets the statutory requirements which affect the existing driving
21 privilege.

22 G. Any person who is found guilty of a violation of the
23 provisions of this section shall be ordered to participate in an
24 alcohol and drug substance abuse evaluation and assessment program

1 offered by a certified assessment agency or certified assessor for
2 the purpose of evaluating and assessing the receptivity to treatment
3 and prognosis of the person and shall follow all recommendations
4 made in the assessment and evaluation for treatment. The court
5 shall order the person to reimburse the agency or assessor for the
6 evaluation and assessment. Payment shall be remitted by the
7 defendant or on behalf of the defendant by any third party;
8 provided, no state-appropriated funds are utilized. The fee for an
9 evaluation and assessment shall be the amount provided in subsection
10 C of Section 3-460 of Title 43A of the Oklahoma Statutes. The
11 evaluation and assessment shall be conducted at a certified
12 assessment agency, the office of a certified assessor or at another
13 location as ordered by the court. The agency or assessor shall,
14 within seventy-two (72) hours from the time the person is evaluated
15 and assessed, submit a written report to the court for the purpose
16 of assisting the court in its sentencing determination. The court
17 shall, as a condition of any sentence imposed, including deferred
18 and suspended sentences, require the person to participate in and
19 successfully complete all recommendations from the evaluation, such
20 as an alcohol and substance abuse treatment program pursuant to
21 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report
22 indicates that the evaluation and assessment shows that the
23 defendant would benefit from a ten-hour or twenty-four-hour alcohol
24 and drug substance abuse course or a treatment program or both, the

1 court shall, as a condition of any sentence imposed, including
2 deferred and suspended sentences, require the person to follow all
3 recommendations identified by the evaluation and assessment and
4 ordered by the court. No person, agency or facility operating an
5 evaluation and assessment program certified by the Department of
6 Mental Health and Substance Abuse Services shall solicit or refer
7 any person evaluated and assessed pursuant to this section for any
8 treatment program or substance abuse service in which such person,
9 agency or facility has a vested interest; however, this provision
10 shall not be construed to prohibit the court from ordering
11 participation in or any person from voluntarily utilizing a
12 treatment program or substance abuse service offered by such person,
13 agency or facility. If a person is sentenced to imprisonment in the
14 custody of the Department of Corrections and the court has received
15 a written evaluation report pursuant to the provisions of this
16 subsection, the report shall be furnished to the Department of
17 Corrections with the judgment and sentence. Any evaluation and
18 assessment report submitted to the court pursuant to the provisions
19 of this subsection shall be handled in a manner which will keep such
20 report confidential from the general public's review. Nothing
21 contained in this subsection shall be construed to prohibit the
22 court from ordering judgment and sentence in the event the defendant
23 fails or refuses to comply with an order of the court to obtain the
24 evaluation and assessment required by this subsection. If the

1 defendant fails or refuses to comply with an order of the court to
2 obtain the evaluation and assessment, the Department of Public
3 Safety shall not reinstate driving privileges until the defendant
4 has complied in full with such order. Nothing contained in this
5 subsection shall be construed to prohibit the court from ordering
6 judgment and sentence and any other sanction authorized by law for
7 failure or refusal to comply with an order of the court.

8 H. Any person who is found guilty of a violation of the
9 provisions of this section may be required by the court to attend a
10 victims impact panel program, as defined in subsection H of Section
11 991a of Title 22 of the Oklahoma Statutes, if such a program is
12 offered in the county where the judgment is rendered, and to pay a
13 fee of not less than Fifteen Dollars (\$15.00) nor more than Sixty
14 Dollars (\$60.00) as set by the governing authority of the program
15 and approved by the court to the program to offset the cost of
16 participation by the defendant, if in the opinion of the court the
17 defendant has the ability to pay such fee. Additionally, the court
18 may also require such person to participate in a victims impact
19 panel program, as defined in subsection H of Section 991a of Title
20 22 of the Oklahoma Statutes, that is offered online and pay a fee
21 that may exceed One Hundred Dollars (\$100.00) as set by the
22 governing authority of the victims impact panel program and approved
23 by the court if, in the opinion of the court, the defendant has the
24 ability to pay such fee. For persons deemed indigent by the court,

1 the victims impact panel program offered online may be provided at
2 no charge to such indigent person.

3 I. Any person who is found guilty of a felony violation of the
4 provisions of this section shall be required to submit to electronic
5 monitoring as authorized and defined by Section 991a of Title 22 of
6 the Oklahoma Statutes.

7 J. Any person who is found guilty of a violation of the
8 provisions of this section who has been sentenced by the court to
9 perform any type of community service shall not be permitted to pay
10 a fine in lieu of performing the community service.

11 K. When a person is found guilty of a violation of the
12 provisions of this section, the court shall order, in addition to
13 any other penalty, the defendant to pay a one-hundred-dollar
14 assessment to be deposited in the Drug Abuse Education and Treatment
15 Revolving Fund created in Section 2-503.2 of Title 63 of the
16 Oklahoma Statutes, upon collection.

17 L. 1. When a person is eighteen (18) years of age or older,
18 and is the driver, operator, or person in physical control of a
19 vehicle, and is convicted of violating any provision of this section
20 while transporting or having in the motor vehicle any child less
21 than eighteen (18) years of age, the fine shall be enhanced to
22 double the amount of the fine imposed for the underlying driving
23 under the influence (DUI) violation which shall be in addition to
24 any other penalties allowed by this section.

1 2. Nothing in this subsection shall prohibit the prosecution of
2 a person pursuant to Section 852.1 of Title 21 of the Oklahoma
3 Statutes who is in violation of any provision of this section or
4 Section 11-904 of this title.

5 M. Any plea of guilty, nolo contendere or finding of guilt for
6 a violation of this section or a violation pursuant to the
7 provisions of any law of this state or another state prohibiting the
8 offenses provided for in this section, Section 11-904 of this title,
9 or paragraph 4 of subsection A of Section 852.1 of Title 21 of the
10 Oklahoma Statutes, shall constitute a conviction of the offense for
11 the purpose of this section; provided, any deferred judgment shall
12 only be considered to constitute a conviction for a period of ten
13 (10) years following the completion of any court-imposed
14 probationary term.

15 N. If qualified by knowledge, skill, experience, training or
16 education, a witness shall be allowed to testify in the form of an
17 opinion or otherwise solely on the issue of impairment, but not on
18 the issue of specific alcohol concentration level, relating to the
19 following:

20 1. The results of any standardized field sobriety test
21 including, but not limited to, the horizontal gaze nystagmus (HGN)
22 test administered by a person who has completed training in
23 standardized field sobriety testing; or
24

1 2. Whether a person was under the influence of one or more
2 impairing substances and the category of such impairing substance or
3 substances. A witness who has received training and holds a current
4 certification as a drug recognition expert shall be qualified to
5 give the testimony in any case in which such testimony may be
6 relevant.

7 SECTION 4. This act shall become effective November 1, 2019.

8

9 57-1-8290 GRS 02/27/19

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24